No. 544

# In the Supreme Court of the United States

OCTOBER TERM, 1938

THE UNITED STATES OF AMERICA

*v.*

EDWARD H. MARXEN, TRUSTEE OF MONTEREY BREWING COMPANY, A CORPORATION, BANKRUPT

*ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT*

## BRIEF FOR THE UNITED STATES

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### OPINION BELOW

The opinion of the District Court for the Southern District of California is reported in 24 F. Supp. 463. The United States Circuit Court of Appeals for the Ninth Circuit rendered no opinion.

### JURISDICTION

The certificate of the United States Circuit Court of Appeals for the Ninth Circuit was filed December 27, 1938. The jurisdiction of this Court rests on Section 239 of the Judicial Code, as amended by the Act of February 13, 1925.

## QUESTION PRESENTED

The question certified reads as follows (C. 4–5) [1]:

> Where, prior to the filing of a petition for and adjudication in bankruptcy of the maker of a promissory note payable to a bank, the Federal Housing Administrator, under the provisions of the National Housing Act, insured the payee bank against the nonpayment of the note by its maker, upon which note the maker became in default more than sixty days prior to said filing and adjudication, and upon demand of the insured bank made after the adjudication, the Federal Housing Administrator paid to the bank its claim arising from such default, and procured an assignment to the United States of the claim of the insured bank against the bankrupt, which claim had not been presented or proved in bankruptcy by the insured bank, and presented such claim in the name of the United States to the trustee in bankruptcy having before him other allowed claims against the bankrupt, is such claim entitled to priority over such other claims under sec. 3466 of the Revised Statutes (31 U. S. C. A. § 191) by reason of the provisions of sec. 64 (b) (7) [11 U. S. C. A. § 104 (b) (7)].

The question certified may be considered as presenting the following questions:

1. Whether the claim filed in the bankruptcy proceeding is a claim of the United States.

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[1] These references are to the Certificate.

2. Whether the Government's claim was provable in bankruptcy where the bankrupt defaulted more than sixty days before the petition in bankruptcy was filed and, after bankruptcy, the Government discharged its obligation to the payee of the bankrupt's note and obtained an assignment of the note.

3. Whether the Government's claim is entitled to priority under Section 64b (7) of the Bankruptcy Act, as amended, and Revised Statutes, Section 3466.

## STATUTES INVOLVED

The statutes involved are set forth in the Appendix, *infra* pp. 29–34.

## STATEMENT

The facts as summarized from the Certificate (pp. 1–2) are as follows (C. 1–2):

On January 2, 1936, the California Bank, a banking corporation, loaned $609.39 to the Monterey Brewing Company, for which indebtedness that company executed a promissory note. That indebtedness was duly reported by the California Bank to the Federal Housing Administrator (hereinafter called the Administrator) in pursuance of a policy of insurance issued by the Administrator to the California Bank on August 10, 1934. The California Bank was insured by the Administrator against losses which it might sustain as a result of loans made by it for the purpose of financing alter-

ations, repairs, improvements and additions on real property, and to purchase and install equipment and machinery on real property.

Upon the report of the loan by the California Bank to the Administrator, he became responsible to the California Bank for the payment of the indebtedness of the Monterey Brewing Company, in accordance with the contract of insurance and under the provisions of Regulations 15 and 17 adopted by the Administrator, in the event said debtor should fail to pay the same.

Payments were made by the Monterey Brewing Company reducing the amount of the principal indebtedness to $373.33 on February 2, 1937. On that day the debtor defaulted in the payment of its debt. Regulation 15 provides that the insured party may not make claim upon the Administrator until sixty days after such default, which period expired on April 3, 1937.

On April 5, 1937, the Monterey Brewing Company filed its petition and was adjudicated a bankrupt. Thereafter, in accordance with the insurance policy, the California Bank, on July 3, 1937, made a claim upon the Administrator for the payment to it of the balance of indebtedness due the bank by the Monterey Brewing Company. On August 4, 1937, the Administrator, after auditing the claim and finding $384.56 due thereon, paid to the California Bank that sum by draft drawn on the Treasury of the United States, whereupon the

California Bank assigned the note to the United States. On November 13, 1937, the Administrator filed a claim upon the note in the bankruptcy proceedings on behalf of and in the name of the United States.

On January 18, 1938, the trustee of the bankrupt estate objected to the allowance of the claim as a prior claim of the United States, contending that it should be allowed only as a general claim. On January 27, 1938, the referee in bankruptcy disallowed the claim of the United States as a prior claim but allowed the same as a general claim, finding as a fact that although in the name of the United States it was in favor of the Administrator.

Upon petition to review the referee's order was confirmed and approved by the District Court. An appeal was then taken to the Circuit Court of Appeals for the Ninth Circuit which has certified the question of priority.

## SUMMARY OF ARGUMENT

I. The Federal Housing Administrator is an official of the United States Government. The Federal Housing Administration is an agency of the United States and is not incorporated. The United States is the real party in interest and the claim is a claim of the United States and not one of the Federal Housing Administrator.

II. The claim of the United States was not based on the assignment of the bankrupt's note after

bankruptcy. An implied contract existed between the Brewing Company as maker of the note and the United States as insurer or surety at the time of the filing of the petition in bankruptcy. The United States had a provable claim in bankruptcy at the time the petition was filed notwithstanding the fact that it had not at that time reimbursed the Bank for the unpaid balance of the note.

III. The United States, having a provable debt at the time of the filing of the petition in bankruptcy, was entitled to priority within the terms of Section 3466 of the Revised Statutes, which have been liberally construed in favor of the United States, and within its purpose and policy to grant priority to all debts, legal and equitable, due to the United States from any person, individual or corporate.

## ARGUMENT

On February 2, 1937, the maker defaulted on the unpaid balance of its promissory note given to the California Bank as payee, payment of which had been insured by the Administrator on behalf of the United States pursuant to the National Housing Act. On April 5, 1937, the maker filed its petition and was adjudicated bankrupt. On July 3, 1937, the Bank made a claim upon the Administrator for payment of the balance of the note and, upon payment, assigned the note to the United States. On November 13, 1937, the Administrator filed a claim on behalf of and in the name of the United States, claiming priority in the bankruptcy proceedings.

This question of priority of claims by the Administrator on behalf of the United States has been decided in favor of the Government in some cases. *Wagner* v. *MacDonald*, 96 F. (2d) 273 (C. C. A. 8th); *In re Dickson's Estate*, 84 P. (2d) 661 (Sup. Ct. Wash.); *In re Stamford Auto Supply Co.*, 25 F. Supp. 530 (N. D. Tex.); *In re T. N. Wilson, Inc.*, 24 F. Supp. 651 (E. D. N. Y.); *In re Dowell-Willis Chevrolet Co.*, 23 F. Supp. 236 (N. D. Tex.). Other cases have been decided against the Government either on the ground that the claim of the Administrator is not a claim of the United States (*Federal Housing Administrator* v. *Moore*, 90 F. (2d) 32 (C. C. A. 9th)), or on the ground that, even if it is a claim of the United States, there is no priority if the United States obtained an assignment of the bankrupt's note after bankruptcy, because the Government can obtain no better claim than its assignor. *In re Hansen Bakeries, Inc.*, decided January 27, 1939 (C. C. A. 3rd) not yet officially reported but see C. C. H. Bankruptcy, Par. 51590, Prentice-Hall Bankruptcy, p. 8103; *In re Miller*, 25 F. Supp. 336 (S. D. N. Y., now pending on appeal in the Second Circuit Court of Appeals awaiting decision in the instant case).

In the present case the referee denied priority apparently on the first ground (C. 2) and the District Court affirmed (24 F. Supp. 463) on the authority of *Federal Housing Administrator* v. *Moore, supra*.

The trustee contended in his brief in the court below that the debt, due to the Bank alone at the time of the bankruptcy adjudication, did not obtain the status of a prior claim by assignment to the United States after bankruptcy. In his reply brief the trustee contended that the United States was not a surety or guarantor of the bankrupt with a provable claim, but was an insurer with no claim provable in bankruptcy. The Government contended below and now contends (I) that the claim is a debt due to the United States; (II) that the United States had a provable claim at the time the petition in bankruptcy was filed; and (III) that the claim of the United States is a prior claim.

## I

### THE UNITED STATES IS THE REAL PARTY IN INTEREST AND THE CLAIM IS A CLAIM OF THE UNITED STATES AND NOT OF THE FEDERAL HOUSING ADMINISTRATOR

By Title I of the National Housing Act of June 27, 1934, c. 847, 48 Stat. 1246, Congress authorized the President to create a Federal Housing Administration. Section 1 provides that all of the powers of the Administration are to be exercised by a Federal Housing Administrator appointed by the President by and with the advice and consent of the Senate.[2] Section 2 (as amended by Section 28 of

[2] On June 30, 1934, the President created the Administration and appointed the Administrator (See Executive Order No. 7280, promulgated January 28, 1936, *infra*, p. 41).

the Act of May 28, 1935, c. 150, 49 Stat. 293, 299, and by Section 344 (b), the Banking Act of August 23, 1935, c. 614, 49 Stat. 684, 722) authorized and empowered the Administrator to insure financial institutions approved by him against losses which they might sustain as a result of certain types of loans and advances of credit made by them for the purpose of financing alterations, repairs, and improvements upon real property, including the purchase and installation of equipment and machinery. Section 3 (repealed by Section 2 of the Act of April 3, 1936, c. 165, 49 Stat. 1187, 1188) authorized the Administrator to enter into loan agreements with such financial institutions.

Section 4 provided that the funds to carry out the provisions of Titles I, II, and III of the Act were to be obtained from the Reconstruction Finance Corporation, and, at the President's discretion, from any funds available to the President for emergency purposes. Section 202 of Title II of the Act provided for the immediate allocation of $10,000,000 out of these funds to a Mutual Mortgage Insurance Fund to be used by the Administrator as a revolving fund for the purposes of Title II, mutual mortgage insurance. Section 206 provided that moneys in this fund not needed for current operations shall be deposited in the Treasury of the United States to the credit of the Mutual Mortgage Insurance Fund or invested in obligations of the United States.

Section 344 (a) of the Banking Act of August 23, 1935, c. 614, 49 Stat. 684, 722, amended Section 1 of the National Housing Act to provide that the Administrator shall, in carrying out the provisions of Titles I, II, and III, be authorized, in his official capacity, to sue and be sued. Section 1 of the Act of April 3, 1936, c. 165, 49 Stat. 1187, 1188, amended Section 2 of the National Housing Act to provide that the Administrator shall have the power, under regulations prescribed by him and approved by the Secretary of the Treasury, to assign, sell, collect, or compromise all obligations assigned to or held by him in connection with the payment of the insurance until such obligations are referred to the Attorney General for suit or collection.

Section 3 of the Act of April 17, 1936, c. 234, 49 Stat. 1232, 1233, added Section 6 to the National Housing Act, authorizing the Administrator to insure banks and other financial institutions approved by him against losses on loans made until January 1, 1937, or such earlier date as the President might proclaim upon the determination that the emergency no longer existed for the purpose of financing owner or lessees of real property in replacing improvements damaged by floods or other catastrophes in 1935 or 1936.

The Federal Housing Administration was created as an agency of the United States, with funds supplied wholly by the Government either directly

or by the Reconstruction Finance Corporation, as an integral part of the broad plan adopted to remedy the urban home mortgage crisis.[3]

The house renovation and modernization plan under Title I was devised to assist in reopening the normal channels of credit and in bringing about a revival of repair work and new building after several years of lessened activity which had reduced employment in the building trades and allied industries.[4]

The fact that the Administrator exercised his powers solely as an officer of the Government is made clear by the statutory provisions subjecting him in some respects to the supervision of other officers of the Government. Insurance under the Act of April 17, 1936, could be contracted for only up to January 1, 1937, or an earlier date fixed by the President. Claims could be compromised only under regulations approved by the Secretary of the Treasury and only until such claims were referred to the Attorney General for suit or collection.

All expenses of the Administration including claims paid under Title I are paid by voucher approved by the Administrator and preaudited by the General Accounting Office. Collections by the Administrator upon notes and collateral assigned to

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[3] See Respondent's brief, p. 71, *Kay* v. *United States*, No. 61, October Term, 1937.

[4] See First Annual Report of the Federal Housing Administration, p. 3, submitted to Congress pursuant to Section 5 of the National Housing Act.

the Administration resulting from insured losses are covered into the Treasury as miscellaneous receipts. Thus the Administrator does not have physical possession of any moneys. Expenditures are made by the disbursing officer of the Treasury under the authority of the Administrator, and the funds received by the Administrator are turned over to the Treasury.[5]

The acts of agents and instrumentalities of the United States Government have often been held to be those of the United States in legal effect when the United States was the real party in interest.[6]

In the present case the Administrator expressly held himself as acting and was acting "on behalf of and in the name of the United States * * *" (C. 2). The bankrupt's note was assigned to the United States (C. 2) pursuant to instructions issued to all insured financial institutions (circular letter of the Administration, *infra*, p. 36). The contract of insurance issued to the California bank expressly states that the Administrator, "acting for and on behalf of the United States," has approved the financial institution and the contract is executed by the Administrator "for and on be-

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[5] See Letter of Comptroller General to Administrator dated January 23, 1936, *infra*, p. 42.

[6] *E. I. Du Pont De Nemours & Co.* v. *Davis*, 264 U. S. 456, 462; *Clallam County* v. *United States*, 263 U. S. 341; *U. S. Grain Corp.* v. *Phillips*, 261 U. S. 106; *Posey* v. *Tennessee Valley Authority*, 93 F. (2d) 726, 727 (C. C. A. 5th); *Langer* v. *United States*, 76 F. (2d) 817, 823 (C. C. A. 8th); *North Dakota-Montana Wheat Growers' Ass'n* v. *United States*, 66 F. (2d) 573, 576-577 (C. C. A. 8th).

half of the United States" and is signed by the "United States of America," being executed for the Government by the Administrator.[7]

The provision authorizing the Administrator to sue and be sued merely provides another officer in whose name the rights of the United States, the real party in interest, can be asserted and defended.[8]

The respondent submits that it has been correctly held that the claim is a claim of the United States. *Wagner* v. *McDonald,* 96 F. (2d) 273, 274 (C. C. A. 8th); *In re Dickson's Estate,* 84 F. (2d) 661, 664 (Sup. Ct. Wash.); *In re Dowell-Willis Chevrolet Co.,* 23 F. Supp. 236, 240 (N. D. Tex.), *In re T. N. Wilson, Inc.,* 24 F. Supp. 651 (E. D. N. Y.).

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[7] This contract of insurance, dated August 10, 1934 (Appendix, *infra*, p. 36), is not set out in the Certificate but is on an official form identical with the official form annexed to the regulations dated July 15, 1935, issued by the Administrator pursuant to the National Housing Act and in effect when the loan here involved was made on January 2, 1936.

[8] *United States Shipping Board Emergency Fleet Corp.* v. *Wood*, 258 U. S. 549, 570, held that a claim of the Fleet Corporation was not entitled to priority under Revised Statutes, Section 3466. That case is distinguishable, however, because the Fleet Corporation was not merely empowered to sue and be sued, but also was created, like any business corporation, as a distinct corporate entity under the General Laws of the District of Columbia and because the claim was not in the name of the United States. Compare *Whan* v. *Green Star S. S. Corporation*, 22 F. (2d) 483, 487–488 (C. C. A. 2d), certiorari denied, 276 U. S. 629, in which the claim arising out of transactions involving the Fleet Corporation was in the name of the United States and was allowed priority.

## II

### THE GOVERNMENT POSSESSED A PROVABLE CLAIM AT THE TIME THE PETITION IN BANKRUPTCY WAS FILED

Some of the decisions denying priority to the Government's claims as insurer seem to be based (although the opinions do not discuss the question at any length) first on the legal ground that a claim, arising out of a transaction to which the United States was not a party before bankruptcy, does not become entitled to priority under Revised Statutes, Section 3466, simply by assignment to the United States after bankruptcy and then upon the assumption that the claim of the United States as an insurer should be treated as a claim purchased after bankruptcy. *In re Hansen Bakeries, Inc., supra; In re Miller, supra.* Even assuming *arguendo* that Section 3466, despite its broad language, was not intended to extend priority to a claim arising out of a transaction before bankruptcy to which the United States was not a party and assigned to the United States after bankruptcy (but see Point III *post*), the Government submits that the courts erred in these decisions in assuming that the claim as insurer is based solely on the promissory note and is to be treated in the same manner as a claim purchased after bankruptcy.

The Government as insurer has an indemnitor's rights, and, like a surety, is subrogated to the rights of the assured. *Aetna Life Ins. Co.* v. *Moses,* 287

U. S. 530, 542. The Bankruptcy Act contains specific provisions regulating the obligations and rights of sureties, guarantors, or other persons, such as the United States as insurer here, secondarily liable for a bankrupt's debts. Section 16 provides that the liability of codebtors or sureties shall not be altered by the discharge of the bankrupt. Section 57i provides that the surety may prove the principal creditor's claim in the creditor's name if the latter fails to do so.

The relationship between the surety and the bankrupt is based not only upon the surety's subrogation to the principal creditor's rights but also on the separate, though ancillary, implied contract between the bankrupt and the surety. The surety has a claim which is not objectionably contingent, but is provable in bankruptcy even though the surety does not pay the debt until after bankruptcy. *Williams* v. *United States Fidelity Co.*, 236 U. S. 549; cf. *Maynard* v. *Elliott*, 283 U. S. 273.

On the one hand the surety might be considered to be proving the claim, separate from the creditor's claim, based on the bankrupt's promise to the surety, implied in the present case but often expressed and sometimes secured by collateral. *Tennant v. United States Fidelity & Guaranty Co.*, 17 F. (2d) 38 (C. C. A. 3rd); cf. *Williams* v. *United States Fidelity Co., supra.* On the other hand, the surety might be considered to be proving the principal creditor's claim. *J. S. Farming Co.* v. *Bran-*

*nan*, 263 Fed. 891 (C. C. A. 6th); *Swarts* v. *Siegel*, 117 Fed. 13 (C. C. A. 8th); *In re Astoroga Paper Co.*, 234 Fed. 792, 796 (N. D. N. Y.); *In re Manhattan Brush Mfg. Co.*, 209 Fed. 997 (S. D. N. Y.). A distinction between the principal creditor's claim on a promissory note, which may be proved by the surety, and the surety's claim based on the bankrupt's implied promise is indicated to some extent by the consideration that the former claim is provable as a debt evidenced "by an instrument in writing" under Section 63a (1), but the latter claim, like the surety's claim in the *Williams* case, *supra*, is provable as a debt on a "contract expressed or implied" under Section 63a (4).

For most purposes a sharp distinction is not made to determine upon which promise the surety proves its claim (*Williams* v. *United States Fidelity Co.*, *supra*) because in either case the surety's rights are the same and double recovery by a claim on both promises is not permitted. Cf. *In re Oriental Commercial Bank*, L. R. 7 Ch. App. 99, 103. In the present case, however, the existence of the implied contract between the Government as insurer and the bankrupt, from the time the bankrupt signed the note, serves to distinguish the claim of the United States as a surety from a claim which the United States might purchase after bankruptcy. Even if such a purchased claim were denied priority, which is not conceded, the present claim of the United States as insurer is different because it arises before bankruptcy.

The implied contract in the present case existed between the bankrupt and the United States from the time the note was executed. On July 15, 1935, the Federal Housing Administrator approved a printed form (No. FHE 3–CS, Appendix, *infra*, p. 38) to be filled out by applicants for loans of less than $2,000 under Title I of the National Housing Act. Regulation 10, approved July 15, 1935, *infra*, p. 34), required the borrower to fill out that form before an insured loan could be made. On that form the applicant for such a loan states that he is submitting information concerning his credit standing "for the purpose of inducing you [the insured financial institution] to grant credit under the provisions of Title I of the National Housing Act." Later on in the same printed form the applicant is asked whether he has ever theretofore applied for or received a loan or loans under the National Housing Act. A person filling out such an application is thus made aware that he is seeking a loan in respect of which the financial institution is insured under the Act; and if such a loan is granted, that surety rights and obligations on the part of the United States will accrue for which he will be responsible in case of a default on his part, bringing the suretyship relation into operation.

The consideration to the Government in acting as surety for the bankrupt was its agreement to use the money received to effectuate the purposes

of the National Housing Act. The California Bank agreed to advance the money because the Administrator had agreed to pay the bankrupt's obligation if it should default. It may fairly be assumed that the Bank would never have made this loan if payment thereof had not been assured. The consideration between the bank and the Government was the granting of this loan for which the Government was acting as surety or insurer in order that the purposes of the National Housing Act would be accomplished. The borrower derived benefit from the proceeds of the loan and the bank made a profit. Thus when the note was executed and the loan granted, the relation of suretyship was created between the Monterey Brewing Company, the California Bank, and the United States.

The Government rights as insurer or surety were based on the implied promise of the bankrupt and on the doctrine of subrogation but not on the assignment of the note. The Government had a provable claim at the time of bankruptcy independent of and before the assignment of the note. It is submitted, therefore, that whether the provable claim is based on the promise to the Bank or the implied promise to the surety, the question to be determined is the priority of a claim held by the Government at the time of bankruptcy and not the priority of a claim, arising out of a transaction to which the Government was not a party, assigned to the Government after bankruptcy.

## III

### THE CLAIM OF THE UNITED STATES IS ENTITLED TO PRIORITY UNDER SECTION 64 (b) (7) OF THE BANKRUPTCY ACT AND REVISED STATUTES, SECTION 3466

Section 64 (b)[9] (7) of the Bankruptcy Act, as amended by the Act of May 27, 1926, c. 406, 44 Stat. 662, 666–667, provides that "debts owing to any person who by the laws of the States or the United States is entitled to priority" shall be paid in advance of dividends to general creditors, provided that the term person, as used therein, shall include the United States.

Revised Statutes, Section 3466, is a law of the United States, within the meaning of Section 64 (b) (7) of the Bankruptcy Act, entitling debts of the United States to priority. *United States* v. *Kaplan*, 74 F. (2d) 664, 665 (C. C. A. 2d). The Government contends that the debt due from the bankrupt to the United States, arising out of its insurance of the bankrupt's promissory note, is a debt entitled to priority within the words of Section 3466, which have been given the full effect of their natural and common meaning by judicial construction since at least 1805. *United States* v. *Fisher*, 2 Cranch 358.

1. *The terms of Section 3466 include this debt.*—In broadest possible language Section 3466 pro-

[9] The Act of 1926 added the proviso after it was determined in *Davis* v. *Pringle*, 268 U. S. 315, that the United States was not a person within this section before the amendment.

vides that "Whenever any person indebted to the United States is insolvent * * * the debts due to the United States shall be first satisfied; * * *." The statute does not exclude from its operation any class of debtors of the United States or any class of debts due to the United States, but includes all debts due to the United States from any person.

The statute says "Whenever any person indebted to the United States *is* insolvent," not *becomes* insolvent, and, therefore, this language may be broad enough to include even a debt arising out of a transaction to which the United States was in no manner a party and assigned to the United States after the debtor's insolvency. Compare United *States* v. *Bank of North Carolina*, 6 Pet. 29, and *United States* v. *Bryan*, 9 Cranch 374. In the present case, however, it is unnecessary to decide that question because the United States is not asserting such a debt but is asserting a claim it had before bankruptcy and sufficiently definite when the petition in bankruptcy was filed to be a provable claim at that time whether viewed as a claim based on the distinct, although ancillary, implied promise of the bankrupt to the United States as insurer, or viewed as a claim, by subrogation, based on the bankrupt's promise to the California Bank (Point II, *supra*). It must also be noted that the default on the note occurred before bankruptcy.

If the debt to the United States is based on the implied promise of the bankrupt to which the bank was not directly a party, certainly the debt is within the terms of Section 3466. Even if the claim of the United States, by subrogation, is based on the promise to the Bank, we submit that it is a debt due to the United States within the commonly understood meaning of the words of Section 3466.

2. *Judicial construction of Section 3466 supports our contention.*—The Act of July 31, 1789, Sec. 21, c. 5, 1 Stat. 29, 42, first gave the United States priority but was limited to debts due on bonds for duties. The Act of May 2, 1792, Sec. 18, c. 27, 1 Stat. 259, 263, allowed sureties who paid their debts to the United States to exercise their priority. The Act of March 3, 1797, Sec. 5, c. 20, 1 Stat. 512, 515, extended the priority to all debts due from any person. The Act of March 2, 1799, Sec. 65, c. 22, 1 Stat. 627, 676, applied to bonds for duties. R. S., Sec. 3466 is derived from the Acts of 1797 and 1799.

From the beginning Section 3466 and its statutory predecessors have been construed liberally in favor of the United States to include all debts of any kind due to the United States from any person, individual or corporate. *United States* v. *Fisher*, 2 Cranch 358; *Harrison* v. *Sterry*, 5 Cranch 289, 298–299; *United States* v. *State Bank of North Carolina*, 6 Pet. 29, 35; *Beaston* v. *Farmers' Bank*, 12 Pet. 102, 134; *Lewis, Trustee* v. *United States*,

92 U. S. 618–621; *Bramwell* v. *United States Fidelity and Guaranty Co.*, 269 U. S. 483, 487; *Price* v. *United States*, 269 U. S. 492, 500; *Howe* v. *Sheppard*, 2 Sumner 133, 12 Fed. Cas. No. 6772, p. 672 (C. C. Me.).

*United States* v. *Fisher, supra*, construed Section 5 of the Act of 1797. The cashier of the Bank of the United States, for the Secretary of the Treasury, purchased a bill of exchange endorsed by one Blight and paid for it by a warrant on the Bank. The bill was protested after notice given on April 11, 1800. Blight committed an act of bankruptcy and a commission issued against him on April 10, 1801. Thereafter an absolute assignment of his effects was made and the United States brought an action against the assigned to recover the amount of the protested bill and damages. The court below upon these facts, which are stated in its opinion, held that priority was restricted to debts due from revenue officers or other persons accountable for public money. *United States* v. *Fisher*, 1 Wash. C. C. 4.

On appeal it was argued that Section 5 should be construed in relation to the title and the other sections of the Act of 1797 limited to receivers of public money, and that the phrase "any other person" in Section 5 should be read to mean "any other person accountable for public money." It was also argued that commercial embarrassment would be caused by a broader construction because credi-

tors, although anticipating the priority of the Government's claims against receivers of public money, expect to share equally with all the creditors upon the insolvency of a private debtor who may have endorsed a bill of exchange purchased by the Government. The Court held, however, that the words of Section 5, which have been carried into Section 3466, were too broad to be limited by the fact that the title of the Act and the other sections were restricted to public officers. The argument of inconvenience was rejected as one which should be directed to Congress in view of the plain words of the statute and the decision of the court below was reversed. Justice Washington, who wrote the opinion of the court below, took no part in the decision on appeal but filed an opinion (pp. 397–405) repeating his views.

In *Harrison* v. *Sterry, supra,* this Court rejected the construction that the priority was not intended to apply to a debt arising upon a contract made by the United States abroad. In *United States* v. *Bank of North Carolina, supra,* this Court held that the priority was not limited to a debt on a customer's bond due when the assignment in insolvency was made, but extended to the debt due on a bond not payable at that time.

This Court in *Beaston* v. *Farmer Bank, supra,* holding that a corporation which was a debtor of the United States was a person within Section 5

of the Act of 1797, summed up the rule established by the earlier opinions as follows (p. 134):

> All debtors to the United States, whatever their character, and by whatever mode bound, may be fairly included within the language used in the fifth section of the act of congress. And it is manifest, that congress intended to give priority of payment to the United States over all other creditors, in the cases stated therein. It, therefore, lies upon those who claim exemption from the operation of the statute, to show that they are not within its provisions * * *. As this statute has reference to the public good, it ought to be liberally construed * * *.

In *Lewis, Trustee* v. *United States, supra,* holding that the United States as a creditor of a partnership is entitled to prior payment out of the bankrupt partners' separate estates, this Court stated (p. 621):

> It [the debt] may be by simple contract, specialty, judgment, decree, or otherwise by record. The debt may be legal or equitable, and have been incurred in this country or abroad. A valid indebtedness is as effectual in one form as another. No discrimination is made by the statute.
>
> The debtors may be joint or several, and principals or sureties.

In *Howe* v. *Sheppard, supra,* priority was granted even to a debt assigned to the United

States. Judgment creditors, in partial satisfaction of indebtedness on duty bonds, assigned to the United States a judgment arising out of a transaction to which apparently the United States was not a party. Pending the action by the United States on the judgment in the name of the judgment creditors, the judgment debtor died and his estate was found to be insolvent. The administrator of the estate contended that there was no priority on the ground that the assignment did not make the judgment debtor a debtor of the United States or give the assignee new rights but that the assignee "stands only in the place of the assignor" not altering the debtor's liability. The court (Story, J.) held, however, that the assignment did in equity transfer the debt to the United States and that the statute made no distinction between legal and equitable debts. The court stated (12 Fed. Cas. p. 675):

> The words of the statute seem to extend to all cases of debts due to the United States from an insolvent debtor's estate; and if payable at all out of his assets, the rule of priority seems co-extensive with the duty of the executor or administrator to pay.

The more recent cases also emphasize that the "established rule of liberal construction requires that the priority act be applied having regard to the public good it was intended to advance. Its

application is not to be narrowly restricted to the cases within the literal and technical meaning of the words used." *Bramwell* v. *U. S. Fidelity Co.*, 269 U. S. 483, 492; *Price* v. *United States*, 269 U. S. 492, 500.

Cases such as *United States* v. *Guaranty Trust Co.*, 280 U. S. 478, 485–486, and *Mellon* v. *Michigan Trust Co.*, 271 U. S. 236, 240, are distinguishable because they "dealt with legislation of a different character." *United States* v. *Knott*, 298 U. S. 544, 547–548. In those cases claims arising out of Federal control and the termination of Federal control of the railroads were denied priority on the ground that Congress unmistakably disclosed its purpose that such claims should not obtain priority under Section 3466. In the *Guaranty Trust* case this Court pointed out (p. 485) that the priority would defeat the purpose of Congress to re-establish railroad credit and that by statutory provisions for security Congress disclosed a purpose not to rely on the statutory priority.

In the present case, however, the statute does not require security on loans of the type here involved. The existence of the priority facilitates loans and thus helps to achieve the objectives of the statute because it protects the United States without strict requirements in the Administrator's regulations for security or other limitations on loans.

The court below in its Certificate (C. 4) states that the question arises whether the provisions of Section 64 (b) giving priority to the United States are modified by Section 57i, which provides that whenever a creditor fails to prove a claim the surety may do so in the creditor's name. Nothing in the purpose of Section 57i or in the relation of these sections or elsewhere in the Act suggests that the priority granted in Section 64 (h) (7) shall be limited by Section 57i. The purpose of Section 57i is to protect the interest of sureties in the bankruptcy assets, not to limit priority or other rights which a surety may have. Moreover, Section 57i applies to sureties generally and does not mention the United States. The canon of construction that the rights of the United States are not affected by general words of a statute applies to the Bankruptcy Act and forbids limitation of its priority by such a construction of the general terms of Section 57i.

It is submitted that the debt of the United States is entitled to priority because it is within both the terms of Section 3466 and its purpose and public policy that upon a debtor's insolvency the debt due to all the people, represented by the Government, shall be paid before the debts due to other creditors.

## CONCLUSION

The question certified should be answered in the affirmative.

Respectfully submitted.

ROBERT H. JACKSON,
*Solicitor General.*
SAM E. WHITAKER,
*Assistant Attorney General.*
PAUL A. SWEENEY,
*Special Assistant to the Attorney General.*
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*General Counsel, Federal Housing Administration.*

MARCH 1939.

# APPENDIX

Section 3466 of the Revised Statutes (U. S. C., Title 31, sec. 191) provides as follows:

> SEC. 3466. Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority hereby established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed.

The Act of July 1, 1898, Section 57 i, c. 541, 30 Stat. 544, 560 (U. S. C., Title 11, sec. 93), provides:

> i. Whenever a creditor, whose claim against a bankrupt estate is secured by the individual undertaking of any person, fails to prove such claim, such person may do so in the creditor's name, and if he discharge such undertaking in whole or in part he shall be subrogated to that extent to the rights of the creditors.

The Act of May 27, 1926, Section 15, c. 406, 44 Stat. 662, 666–667 (U. S. C., Title 11, sec. 104),

provides, in part, that Section 64, subdivision (b) of the Bankruptcy Act of July 1, 1898, and Acts amendatory thereof and supplementary thereto, is amended as follows:

SEC. 15 (b). The debts to have priority, in advance of the payment of dividends to creditors, and to be paid in full out of bankrupt estates, and the order of payment shall be (1) the actual and necessary cost of preserving the estate subsequent to filing the petition; (2) the filing fees paid by creditors in involuntary cases, and, where property of the bankrupt, transferred or concealed by him either before or after the filing of the petition, shall have been recovered for the benefit of the estate of the bankrupt by the efforts and at the expense of one or more creditors, the reasonable expense of such recovery; (3) the cost of administration, including the fees and mileage payable to witnesses as now or hereafter provided by the laws of the United States, and one reasonable attorney's fee, for the professional services actually rendered, irrespective of the number of attorneys employed, to the petitioning creditors in involuntary cases while performing the duties herein prescribed, and to the bankrupt in voluntary and involuntary cases, as the court may allow; (4) where the confirmation of composition terms has been refused or set aside upon the objection and through the efforts and at the expense of one or more creditors, in the discretion of the court, the reasonable expenses of such creditors in opposing such composition; (5) wages due to workmen, clerks, traveling or city salesmen, or servants, which have been earned within three months before the date of the commencement of the

proceeding, not to exceed $600 to each claimant; (6) taxes payable under paragraph (a) hereof and (7) debts owing to any person who by the laws of the States or the United States is entitled to priority: *Provided*, that the term "person" as used in this section shall include corporations, the United States, and the several States and Territories of the United States.

Title I of the Act of June 27, 1934, c. 847, 48 Stat. 1246–1247 (U. S. C., Title 12, secs. 107–1706) provides:

TITLE I—HOUSING RENOVATION AND MODERNIZATION

CREATION OF FEDERAL HOUSING ADMINISTRATION

SECTION 1. The President is authorized to create a Federal Housing Administration, all of the powers of which shall be exercised by a Federal Housing Administrator (hereinafter referred to as the "Administrator"), who shall be appointed by the President, by and with the advice and consent of the Senate, shall hold office for a term of four years, and shall receive compensation at the rate of $10,000 per annum. In order to carry out the provisions of this title and titles II and III, the Administrator may establish such agencies, accept and utilize such voluntary and uncompensated services, utilize such Federal officers and employees, and, with the consent of the State, such State and local officers and employees, and appoint such other officers and employees as he may find necessary, and may prescribe their authorities, duties, responsibilities, and tenure and fix their compensation, without regard to the

provisions of other laws applicable to the employment or compensation of officers or employees of the United States. The Administrator may delegate any of the functions and powers conferred upon him under this title and titles II and III to such officers, agents, and employees as he may designate or appoint, and may make such expenditures (including expenditures for personal services and rent at the seat of government and elsewhere, for lawbooks and books of reference, and for paper, printing, and binding) as are necessary to carry out the provisions of this title and titles II and III, without regard to any other provisions of law governing the expenditure of public funds. All such compensation, expenses, and allowances shall be paid out of funds made available by this Act.

INSURANCE OF FINANCIAL INSTITUTIONS

SEC. 2. The Administrator is authorized and empowered, upon such terms and conditions as he may prescribe, to insure banks, trust companies, personal finance companies, mortgage companies, building and loan associations, installment lending companies, and other such financial institutions, which are approved by him as eligible for credit insurance, against losses which they may sustain as a result of loans and advances of credit, and purchases of obligations representing loans and advances of credit, made by them subsequent to the date of enactment of this Act and prior to January 1, 1936, or such earlier date as the President may fix by proclamation, for the purpose of financing alterations, repairs, and improvements upon real property. In no case shall the insur-

ance granted by the Administrator under this section to any such financial institution exceed 20 per centum of the total amount of the loans, advances of credit, and purchases made by such financial institution for such purpose; and the total liability incurred by the Administrator for such insurance shall in no case exceed in the aggregate $200,000,000. No insurance shall be granted under this section to any such financial institution with respect to any obligation representing any such loan, advance of credit, or purchase by it the face amount of which exceeds $2,000; nor unless the obligation bears such interest, has such maturity, and contains such other terms, conditions, and restrictions, as the Administrator shall prescribe.

LOANS TO FINANCIAL INSTITUTIONS

SEC. 3. The Administrator is further authorized and empowered to make loans to institutions which are insured under section 2, and to enter into loan agreements with such institutions, upon the security of obligations which meet the requirements prescribed under section 2. Such loans or agreements may be made for the full face value of the obligations offered as security, and shall be at such rates and upon such terms and conditions as the Administrator shall determine.

ALLOCATION OF FUNDS

SEC. 4. For the purposes of carrying out the provisions of this title and titles II and III, the Reconstruction Finance Corporation shall make available to the Administrator such funds as he may deem necessary, and the amount of notes, debentures, bonds, or other such obligations which the Corpora-

tion is authorized and empowered to have outstanding at any one time under existing law is hereby increased by an amount sufficient to provide such funds: *Provided*, That the President, in his discretion, is authorized to provide suuch [1] funds or any portion thereof by allotment to the Administrator from any funds that are available, or may hereafter be made available, to the President for emergency purposes.

ANNUAL REPORT

SEC. 5. The Administrator shall make an annual report to the Congress as soon as practicable after the 1st day of January in each year of his activities under this title and titles II and III of this Act.

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Regulations of the Federal Housing Administration approved July 15, 1935:

REGULATION NO. 10

(Applicable to all loans)

The question of the financial condition of the borrower is left to the reasonable judgment of the insured institution as a credit matter. The borrower must furnish the lending institution a financial or credit statement, approved as to form by the Administrator, which in the judgment of the insured institution shows the borrower to be solvent, with reasonable ability to pay the obligation and in other respects a reasonable credit risk in view of the insurance provided by the National Housing Act.

[1] So in original.

REGULATION NO. 15

(Applicable to all loans)

Claim for reimbursement for loss on a qualified note may be made to the Administrator at any time after payment of such note has been in default for a period of 60 days. The Administrator in his discretion may at any time or from time to time call for a report from any insured institution on the delinquency status of the obligations held by such institution and reported to him for insurance.

If within the first year after default the borrower has not made payments on his obligation aggregating at least 10% of the balance due on the date of default, claim must be made within 30 days thereafter. If in any subsequent six-month period the borrower has not made payments aggregating at least 5% of the unpaid balance as of the beginning of such period, claim must be made within 30 days thereafter.

REGULATION NO. 17

(Applicable to all loans)

Claims must be made on the proper form, which must be filled out completely and executed in duplicate by a duly qualified officer of the insured institution. If the Regulations have been complied with, payment of the loss incurred will be made upon audit of the claim and upon proper endorsement to the Administrator of the note upon which the loss occurred. If judgment has been taken, assignment of the judgment must be made.

Circular letter of Federal Housing Administration to Financial Institutions, dated July 26, 1937:

To: FINANCIAL INSTITUTIONS.

Insured institutions filing any claim under their insurance contract are advised hereafter to assign all evidences of debt, and any security therefor, to the United States, using the following form of assignment:

"All right, title an dinterest of the undersigned is hereby assigned to the United States of America.

_____
Financial Institution

By _____

Title _____"

Very truly yours,

R. S. HARLAN

ROBERT S. HARLAN

*Director of Title I.*

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CONTRACT OF INSURANCE

No. 735

2 04 19 0640 1

Whereas California Bank, of Los Angeles, California, hereinafter called the Financial Institution, is approved by the Federal Housing Administrator, acting for and on behalf of the United States of America pursuant to authority granted him by law (hereinafter referred to, acting in such capacity; as the Administrator), as an institution eligible for credit insurance under the provisions of Section 2 of the National Housing Act.

Now therefore, in consideration of the stipulations mentioned, the Administrator does hereby insure the Financial Institution pursuant to and under the Regulations printed on the back hereof which are hereby made a part of this contract.

The Administrator further agrees to lend to the Financial Institution, upon the security of notes in good standing and covered by the insurance, such amounts, up to 100% of the current face value of such notes offered for security, as the Financial Institution may request at a rate of interest to be determined by the Administrator. Such loans will be made subject to due execution of an agreement on the part of the Financial Institution satisfactory to the Administrator, placing the duty upon the Financial Institution to collect payments on such notes and to hold the same in trust for, or remit to the Federal Housing Administration, to apply against the loan or otherwise, as the Administrator may direct.

This Contract may be terminated at any time by the Administrator upon giving the Financial Institution at least five days prior written notice of its intention so to do, and in all events this contract shall terminate at the close of business on December 31, 1935, provided however, that in the absence of fraud on the part of the Financial Institution the termination of this contract shall not affect the insurance coverage as to those notes taken or purchased while this Contract was in effect and shall not affect the agreement of the Administrator to lend to the Financial Institution as above set forth.

In witness whereof, the Administrator has executed and attested these presents for and on behalf of the United States of America this Tenth day of August 1934, at Washington, D. C.

UNITED STATES OF AMERICA,
JAMES A. MOFFETT,
*Federal Housing Administrator.*

Form FHE 3-CS—Approved (July 15, 1935) Loans not exceeding $2,000

CREDIT STATEMENT

Dated _____, 193 , at _____, (City) _____ (State)

To _____

_____ (Address)

Name of applicant _____

_____ (Address)

The following information is given for the purpose of inducing you to grant credit under the provisions of Title I of the National Housing Act.

The approximate amount of credit required by me (us) for ____ months is $_____.

Married or single_____. Age_____. Number of dependents_____. How long at present address_____.

Give name of banks or other institutions at which checking, savings, and other accounts are carried

_____

_____

Business references_____

_____

EMPLOYMENT OR BUSINESS

Now employed by_____

Business address _____

Position occupied_____. How long with present employer_____. Time unemployed last three years_____

If applicant is owner of business, what kind?

_____

State whether doing business as individual, partnership, or corporation_____

Length of time in present business_____

INCOME

Salary, commission—or net profit if in business—per year ---------- $------
Other income per year (state source)------
---------- $------

How income is received (weekly, monthly, etc.) ------ Portion derived from farming -------- Total ---------- $------

OBLIGATIONS

| Bank, finance, loan or installment companies, or others, to whom you are making installment payments (exclusive of real estate mortgages). If none, state "None" | Original amount | Unpaid balance | payment (Weekly, monthly, etc.) |
|---|---|---|---|
| ---------- | $------ | $------ | $------ |
| ---------- | $------ | $------ | $------ |
| ---------- | $------ | $------ | $------ |
| ---------- | $------ | $------ | $------ |

Have you any judgments or legal proceedings pending against you?-------- If so, give particulars
----------
Have you applied for or received a loan or loans under the National Housing Act?----------
From whom and for what purposes ----------
----------
Aggregate original amount, $----------
Was application accepted or declined?----------

[Both sides of this form must be filled out]

PROPERTY TO BE IMPROVED

Location of property to be improved:
---------- ---------- -------
(Street and number) (City) (State)
Description and use of above property----------
----------

| Describe improvements or installation planned | Estimated cost | Contractor, dealer, etc. | |
|---|---|---|---|
| | | Name | Address |
| | $ | | |
| | $ | | |
| | $ | | |
| | $ | | |
| | $ | | |

If you rent the property, fill in the following:
Renting property from_____
When does lease expire?_____
If you own the property, fill in the following:
Name in which title appears_____
Estimated value_____ $_____
Total of mortgages or other liens against this property _____ $_____
Is any mortgage or other lien in default in any respect? _____
If so, what arrangements have been made?_____
_____
Is mortgage held by Home Owners' Loan Corporation?_____
If so, do present monthly payments include principal and interest?_____
Are any such payments overdue?_____
If so, for how long?_____
State whether or not all taxes, assesssments, and fire and other insurance premiums are paid up to date (yes or no)_____
Estimated value of other real estate owned_____ $_____
Total of mortgages or other liens against such other real estate owned, $_____
Are any in default?_____
Are all owned structures covered by insurance?
_____

I (we) authorize you, or any financial institution to which you may desire to offer my (our) note for

sale, to obtain such information as you (they) may require concerning the above statement and agree that it shall remain your (their) property whether or not my (our) note is finally accepted by you. I (we) certify that if the loan is granted to me (us) or my (our) note purchased, the entire proceeds will be used exclusively in payment for alterations, repairs, improvements, and/or the purchase and installation of eligible equipment and machinery on the property described above. I (we) hereby affirm that the foregoing information is true and correct.

(Signature)_____ [L. S.]

_____ [L. S.]

(Wife or husband)

[Both sides of this form must be filled out]

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Executive Order No. 7280, promulgated January 28, 1936:

EXECUTIVE ORDER

EVIDENCING, VALIDATING, AND CONFIRMING THE CREATION OF THE FEDERAL HOUSING ADMINISTRATION

WHEREAS the National Housing Act, approved June 27, 1934 (48 Stat. 1246), authorized the President to create a Federal Housing Administration and to appoint a Federal Housing Administrator to exercise all the powers of said Administration; and

WHEREAS, pursuant to such authorization, I did on the 30th day of June 1934 create the Federal Housing Administration, and did on the 30th day of June 1934 appoint a Federal Housing Administrator, whose appointment was confirmed by the Senate of the United States on January 18, 1935; and

WHEREAS since the said 30th day of June 1934 the powers, duties, and functions of the

Federal Housing Administration have been exercised and performed by the Federal Housing Administrator:

NOW, THEREFORE, I, FRANKLIN D. ROOSEVELT, President of the United States, do hereby issue this Executive order as evidence of the creation of the said Federal Housing Administration, and do hereby in all things validate and confirm the creation thereof.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE,
*January 28, 1936.*

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Letter of Comptroller General to Federal Housing Administrator:

COMPTROLLER GENERAL
OF THE UNITED STATES,
*Washington, January 23, 1936.*

A-51615

ADMINISTRATOR, FEDERAL HOUSING ADMINISTRATION.

SIR: There was received by your direction the letter of your Comptroller, dated October 19, 1935, as follows:

"In connection with the administration of the National Housing Act, the Federal Housing Administration receives the following collections:

"*Collections—Insured Losses (Title I, Act of June 27, 1934).*—These receipts are the results of the collection efforts of the Federal Housing Administration to recover on the notes receivable and collateral assigned to the Federal Housing Administration as the results of the insured losses paid financial institutions under the provisions of Title I, Section 3 of the Act, supra. It is recommended that this be covered in the

Treasury as a miscellaneous receipt under the caption suggested.

"*Collections on Loans to Financial Institutions.*—These collections are repayments on the advances made under the provisions of Title I, Section 3 of the Act, to financial institutions secured by insured modernization loans. In view of the fact that these are real loans which are fully secured, etc., and not ordinary expenditures or sales of Government property, it is recommended that these funds be handled as a repayment to OX–681, Renovation and Modernization Loans and Insurance.

"*Interest on Loans to Financial Institutions.*—These collections are in payment of interest to the Federal Housing Administration on account of loans made under the provisions of Section 3 of the Act. It is recommended that they be covered in the Treasury as miscellaneous receipts.

"*Premiums, Mutual Mortgage Insurance.*—These are trust funds received from the mortgagees as a part of their contribution to the Mutual Mortgage Insurance Fund on account of insured mortgages. The premiums are paid annually in advance. It is recommended that they be covered in the Treasury as trust funds for the account of the Mutual Mortgage Insurance Fund.

"*Appraisal Fees, Mutual Mortgage Insurance.*—These are collections from the mortgagees to partially reimburse the Government for the cost of appraising the property offered as security for insured mortgages. It is recommended that these collections be covered in the Treasury as miscellaneous receipts.

"*Interest on Investments, Mutual Mortgage Insurance Fund.*—These are trust-fund receipts on the investments of the

Mutual Mortgage Insurance Fund. It is recommended that they be covered in the Treasury as trust funds for the account of the Mutual Mortgage Insurance Fund.

"Your decision as to the proper receipt symbols and titles and instructions as to the disposition of these funds are requested. The foregoing receipt titles are suggested for your consideration in assigning symbols and titles. As received, the collections are deposited as 'Special Deposits' with the Chief Disbursing Officer of the United States."

In the absence of any provision in Title I of the act of June 27, 1934, 48 Stat. 1246, to the contrary, all receipts in connection with the operations under said title are for covering into the Treasury as miscellaneous receipts. Accordingly, the following receipt symbols and titles have been set up on the books of the Government, and such collections now in the hands of disbursing officers should be immediately covered into the Treasury to the credit of the appropriate account:

7051. Collections — Insured Losses (Title I, Act of June 27, 1934)
7052. Collection of Loans to Financial Institutions
7053. Interest on Loans to Financial Institutions

Section 202 of the said National Housing Act of June 27, 1934, 48 Stat. 1248, provides:

"There is hereby created a Mutual Mortgage Insurance Fund (hereinafter referred to as the 'Fund'), which shall be used by the Administrator as a revolving fund for carrying out the provisions of this title as hereinafter provided, and there shall be allocated immediately to such Fund the sum of $10,000,000 out of funds made available to

the Administrator for the purposes of this title."

In view of this provision for a revolving fund to carry out the provisions of this title, any collections made in connection with the carrying out of said provision—and with respect to which the act does not provide for other disposition—are properly for credit to the said revolving fund. Accordingly, collections received, such as premiums, appraisal fees, and interest on investments, will be deposited to the credit of said revolving fund, and the title of the account now appearing on the books of the Government under the caption "OS353 Mutual Mortgage Insurance Fund, Federal Housing Administration, S. F.," has been changed to "OS353 Mutual Mortgage Insurance Fund, Federal Housing Administration, Revolving Fund."

The funds heretofore deposited to the credit of the receipt account "8146 Interest Earned on Investments, Mutual Mortgage Insurance Fund, Federal Housing Administration" and appropriated to account "OT355 Mutual Mortgage Insurance, Earned Interest Fund, Federal Housing Administration, Trust Fund" will be transferred to the revolving fund by transfer appropriation warrant, and the use of the two accounts for recording interest collections will be discontinued.

Respectfully,

J. R. McCARL,
*Comptroller General of the United States.*

U. S. GOVERNMENT PRINTING OFFICE: 1939